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10/726,252

12/01/2003

Matthew J. Campagna

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919

7590

04/30/2010

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35 WATERVIEW DRIVE
MSC 26-22
SHELTON, CT 06484-3000

EXAMINER

SHEIKH, ASFAND M

ART UNIT

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/726,252
Filing Date: December 01, 2003
Appellant(s): CAMPAGNA, MATTHEW J.

George M. Macdonald
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 1/11/2010 appealing from the Office action mailed 4/13/2009.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:
Claims 1-19.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

6,996,538	Lucas	2-2006
2005/0114233	Mays	5-2005

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lucas (US 6,996,538 B2) in view of Mays (US 2005/0114233 A1).

Claim 1

Lucas discloses a method of establishing and managing a vendor inventory of emergency business supplies for a company (see at least, abstract and col. 1, lines 45-col. 2, lines -20), comprising: receiving compensation for costs of maintaining the inventory (see at least, col. 1, lines 45-col. 2, lines -20); releasing a plurality of the business supplies for sale, after the plurality of the business supplies have been in the vendor inventory for a period of time expiring when a release condition occurs (see at least, col. 4, lines 36-51); and restocking the vendor inventory (see at least, col. 10, lines 46-52).

Lucas fails to disclose guaranteed available inventory for an identified company.

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However Mays discloses that a supply house (e.g. vendor managing inventory) will guarantee inventory for specific items for certain customers (see at least, [0047]: the examiner interprets the cited section under the understanding that a given vendor will guarantee some form of available inventory for a given customer).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Lucas's VMI of emergency business supplies for a company to include that the VMI will guarantee availability of given inventory for a given company as taught by Mays. One of ordinary skill in the art would have been motivated to combine the teachings in order to guarantee inventory specific items for certain customers thereby assuring ready inventory (see at least, [0021] and [0047]).

Claim 2

Lucas discloses wherein the sale is at a discount (see at least, col. 19, lines 37-47) and further comprising: receiving compensation from the company relating to the discount sale (see at least, col. 1, lines 45-col. 2, lines 20).

Claim 3

Lucas discloses wherein if the company provides an assertion to the vendor that the release condition has occurred or will have occurred at a specific time, then the vendor will have only a first period of time to object to that assertion, unless the company

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extends the first period (see at least, col. 10, lines 46-52: the examiner notes "customer chooses" to be a release condition).

Claim 4

Lucas discloses wherein the release condition is that improved business supplies become available for insertion into the vendor inventory (see at least, col. 7, lines 52-65).

Claim 5

Lucas discloses wherein the release condition is that the plurality of the business supplies have reached a particular age or percentage of shelf life or state (see at least, col. 4, lines 36-51: the examiner notes "excess inventory" is a state).

Claim 6

Lucas discloses wherein the discount sale is to the company (see at least, col. 19, lines 37-47).

Claim 7 and 15

Lucas in view of Mays fails to disclose wherein the business supplies in the vendor inventory are owned by the vendor for at least a first period of time that the business supplies are in vendor inventory and owned by the company instead of the vendor for at

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least a second subsequent period of time that the business supplies are in vendor inventory.

The examiner takes official notice that it is old and well known in the inventory arts to have a VMI receive inventory and own the for a period of time before the inventory is re-sold to the business in which the VMI would still hold the inventory (e.g. a manufacturer from over seas sells inventory to a distributor in a local vicinity in which local businesses the buy inventory from the distributor). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Lucas in view of Mays to include the features taught by the Examiner's Official Notice. One of ordinary skill in the art would have been motivated to combine the teachings allow a middle man within business to make profit.

Claim 8

Lucas wherein the company sells at least some of the business supplies to a third party after the discount sale (see at least, col. 4, lines 36-51).

Claim 9

Lucas discloses wherein the receipt of compensation for the inventory costs, and the receipt of compensation for the discount sale are performed substantially simultaneously with the discount sale (see at least, col. 1, lines 45-col. 2, lines -20 and col. 19, lines 37-47).

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Claim 10

Lucas discloses the portion of the business supplies to the company routinely as needed by the company, prior to releasing the business supplies for the discount sale (see at least, col. 1, lines 45-col. 2, lines -20 and col. 19, lines 37-47).

Claims 11-19

The examiner notes the system claims of 11-14 and 16-19 are rejected under similar grounds as method claims the claims 1-10 via the disclosure of Lucas.

(10) Response to Argument

A. Claims 1-19 are not Unpatentable under 35 U.S.C. § 103(a)

With reference to independent claim 1 (and similarly claim 11) (see Appellant's Appeal, page 11):

The Appellant argues Lucas fails to teach "emergency" business supplies, by stating the Appellant was not able to find the use of the term "emergency" anywhere in the reference. The examiner notes Lucas teaches vendor managed inventory (see at least, col. 1, lines 45-52). The examiner notes the inventory managed can be interpreted to be a form of "emergency business supplies" as "emergency business supplies" would be a subset/form of an inventory. Therefore the examiner finds this argument not persuasive.

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The Appellant argues Lucas fails to teach “releasing a plurality of the business supplies for sale, after the plurality of business supplies have been in the vendor inventory for a period of time expiring when a release condition occurs.” The examiner notes Lucas teaches that the VMI allows customers to resell products or equipment to other businesses (see at least, col. 2, lines 9-11). Further Lucas expands on this teaching by stating that the customer are allowed to resell products, equipment, or excess inventory... (see at least, col. 4, lines 36-51). Further customers are allowed to author/distribute articles based on new rules, regulation procedures, and revenue generation prospects, or other information of interest to other customers (see at least, col. 4, lines 36-51). The examiner respectfully asserts that one of ordinary skill in the inventory arts would interpret from the teachings a predictable result of creating a rule based on selling regulation procedure/revenue generation to resell products/equipment/excess inventory based on a period of time (e.g. release condition to occur). The examiner notes one of ordinary skill in the art would base this rationalization on the concept of pushing old inventory out for new inventory (e.g. clothing (spring/summer/fall winter), product refresh (iPhone), etc) as this is known technique/known work in one field of endeavor and therefor would prompt variations for use in the same field which would to predictable result being realized by one of ordinary skill in the art. Therefore the examiner finds this argument not persuasive.

The appellant argues Lucas in view of Mays fails to disclose “guaranteed available inventory for an identified company.” The examiner notes Mays discloses that a supply house/manufacturer can guarantee a given inventory for a specific UPC

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for a customer. The examiner notes as interpreted this would read on the limitation of the claim as there would be a guaranteed inventory for a given customer (e.g. identified company). Therefore the examiner finds this argument not persuasive.

The examiner therefore notes as shown Lucas in view of Mays does indeed teach the features as recited within the limitations of Claim 1. Further the examiner has provided motivation for the proposed combination Mays to Lucas. The examiner also respectfully asserts that one of ordinary skill in the art would have had the knowledge to create a predictable result from the given prior art. Therefore the examiner finds the arguments to Claim 1, not persuasive.

With respect to Claim 3 (see Appellant's Appeal, page 12): the Appellant argues "customer chooses" as a release condition. The examiner notes customers are allowed to author/distribute articles based on new rules, regulation procedures, and revenue generation prospects, or other information of interest to other customers (see at least, col. 4, lines 36-51). The examiner respectfully asserts that one of ordinary skill in the inventory arts would interpret from the teachings a predictable result of creating a rule based on selling regulation procedure/revenue generation to resell products/equipment/excess inventory based on a period of time (e.g. release condition to occur). The examiner notes one of ordinary skill in the art would base this rationalization on the concept of pushing old inventory out for new inventory as this is known technique/known work in one field of endeavor and therefor would prompt variations for use in the same field which would to predictable result being realized by

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one of ordinary skill in the art. Therefore the examiner finds this argument not persuasive.

With respect to claim 4 and 5 (see Appellant's Appeal, page 12-13): the Appellant argues the cited references does not teach or suggest "releasing inventory". The examiner notes customers are allowed to author/distribute articles based on new rules, regulation procedures, and revenue generation prospects, or other information of interest to other customers (see at least, col. 4, lines 36-51). The examiner respectfully asserts that one of ordinary skill in the inventory arts would interpret from the teachings a predictable result of creating a rule based on selling regulation procedure/revenue generation to resell products/equipment/excess inventory based on a period of time (e.g. release condition for inventory). The examiner notes one of ordinary skill in the art would base this rationalization on the concept of pushing old inventory out for new inventory as this is known technique/known work in one field of endeavor and therefor would prompt variations for use in the same field which would to predictable result being realized by one of ordinary skill in the art. Therefore the examiner finds this argument not persuasive.

With respect to claim 7 and 15 (see Appellant's Appeal, page 13): the Appellant traverses the Official Notice of claims 7 and 15 by stating it is improper. The examiner notes the amendments filed with respect to claim 7 and 15, on 12/29/2008, warranted the examiner to further consider the limitation in which the examiner deemed the scope

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of the claim changed. Therefore the examiner took Official Notice with respect to the newly amended claim. The examiner therefore notes this attempt to traverse the Official Notice is noted however it is improper as the Appellant has failed to state why the Official Notice is improper. Therefore the examiner maintains the Official Notice and finds this argument not persuasive.

With respect to claim 9 (see Appellant's Appeal, page 10): the Appellant argues "compensation for a discount sale." The examiner notes Lucas teaches a seller (e.g. VMI) receives proper compensation for a sale (see at least, col. 2, lines 15-20). Further the examiner notes Lucas discloses that discount's can be applied to sales (see at least, col. 19, lines 35-67). Therefore the examiner notes as a sale is being processed via a discount proper compensation would be realized. Therefore the examiner finds this argument not persuasive.

With respect to claims 2-10 and 11-19, the examiner maintains the same rationale as applied to claim 1 above, therefore finds these arguments not persuasive.

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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Asfand M. Sheikh/

Examiner, Art Unit 3627

4/22/2010

Conferees:

/F. Ryan Zeender/

Supervisory Patent Examiner, Art Unit 3627

Vincent Millin /vm/

Appeals Conference Specialist